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Remarks

**I. Status of the Claims**

Claims 1-132 were previously canceled without prejudice or disclaimer, and claims 133-139 and 147-153 are canceled herein without prejudice or disclaimer.

Claims 140-146 are the only pending claims.

**II. Petition to Make Special**

The present cancellation of claims 133-139 and 147-153 in no way affects the Petition to Make Special filed in the instant application on February 27, 2004 ("Petition"). Specifically, Applicant notes that the basis for the Petition was Applicant's knowledge of a product currently on the market which Applicant believes would infringe the claims of the instant application, as amended in the Second Preliminary Amendment filed with the Petition on February 27, 2004. Applicant points out that in support of this belief, a Claim Chart was attached as Exhibit C to the Petition, wherein a rigid comparison of the proposed infringing product to claim 146 of the application was made. Applicant notes that since claim 146 has not been canceled or amended by this paper, the comparison of the product with the claim, and likewise Applicant's basis for requesting the Petition, remains unaffected.

**III. Interview**

Applicant would like to thank the Examiner for the courtesies extended to her personal representatives, Tom Irving, Thalia Warnement, and Michelle O'Brien, at the March 23, 2004, personal interview.

**IV. Full Story™ Lush lash and MagnaScopic® Mascara Products**

As referenced in the Information Disclosure Statement filed on February 27, 2004, and as discussed at the March 23, 2004, personal interview, Applicant is aware of the ingredients of both the Origin's Full Story™ Lush lash and the Estée Lauder MagnaScopic® mascara products. See Exhibit 1 for Full Story™ Lush lash packaging; see Exhibit 2 for MagnaScopic® packaging. However, to the best of Applicant's representatives' knowledge, these two products were launched in 2003, and thus do not constitute prior art with respect to the present application.

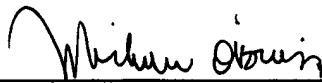
**V. Conclusion**

In view of the foregoing amendments and remarks, Applicant respectfully requests consideration of the application and timely allowance of the pending claims.

Please grant any extensions of time required to enter this Third Preliminary Amendment and charge any fee due in connection with the filing of this Third Preliminary Amendment to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON,  
FARABOW, GARRETT & DUNNER, L.L.P.

By:   
Michelle E. O'Brien  
Reg. No. 46,203

Dated: April 1, 2004

**Attachments:**

- Exhibit 1 -** Origin's Full Story™ Lush lash mascara packaging
- Exhibit 2 -** Estée Lauder's MagnaScopic® mascara packaging

**EXHIBIT 1**

**Origin's Full Story™ Lush lash mascara packaging**



Purchased 16 Jan 04  
Origins Store Paramus, NJ    **The Origins Commitment: Preservation of earth, animal, environment.**  
Le pacte Origins: Préservation de la nature, des animaux, de l'environnement.

This carton was made from 20% post-consumer recycled materials.  
Cet étui est fait de 20% de matériaux de récupération recyclés.

# Full Story™ Lush-lash mascara/Mascara épaississant .27 fl. oz./oz.liq./8 ml e

# ORIGINS

**Ingredients:** aqueous (water, aqua, purificata, purified) infusions; rosa damascena (rose), artemisia nobilis (chamomile) • biododecane • ethylenediamine/stearyl dimer citrate copolymer • laolin • santonium stearate • stearamide meq-stearate • polyisobutene 20 • polyurethane-1 • silica • sorbitan triacetate • pvp • panthenol • tocopheryl acetate • glycerin • tocopherol • butylene glycol • diglycol/dimethylacetate/sip copolymer • stearic acid • acacia seed/egg gum • magnesium aluminum silicate • hydroxyethylcellulose • glyceryl stearate • peg-100 stearate • tetradibutyl pentaerythrityl hydroxyhydroxymurate • citric acid • disodium edta • benzyl alcohol • potassium sorbate • sorbic acid • chlorophenol • phenoxycetanol • methylparaben • ethylparaben • propylparaben • butylparaben • isobutylparaben • p-/-/insy contain) mica • titanium dioxide (d 77891) • iron oxides (d 77491, d 77492, d 77499) • ferric ferrocyanide (d 77510) • ultramarines (d 77007) • blue 1 lake (d 42090) • bismuth oxychloride (d 77163) • chromium hydroxide green (d 77289) • chromium oxide greens (d 77288) • yellow 5 lake (d 19140) <ln23617>

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Achtung! Falls Augenirritationen auftreten, nicht mehr anwenden.

Testé ophtalmologiquement.  
Attention! En cas d'irritation de l'œil, suspendre l'utilisation et consulter immédiatement un ophtalmologiste.

Optically tested.  
Caution! In case of eye irritation, discontinue use and see your ophthalmologist at once.

Full Story™ Lush-lash mascara/La Totale Mascara épaississant



**EXHIBIT 2**

**Estée Lauder's MagnaScopic<sup>®</sup> mascara packaging**



898/712

MagnaScopic  
01-14

ATTENZIONE: In caso di irritazioni, infezioni o screpolature sospendere l'uso di tutti i cosmetici per occhi e consultare l'oculista. Testato oftalmologicamente. Privo di fragranza.  
PRECAUCIÓN: En caso de irritación, infección o picor suspenda el uso de todo cosmético de ojos y consulte inmediatamente con su oftalmólogo. Probado oftalmológicamente. Sin fragancia.



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MADE IN CANADA 1T4F-01  
0 27131 27054 16

INGREDIENTS: WATER, AQUA, PURIFICATA, PURIFIED, ISODODECANE, ETHYLENEDIAMINE, STEARIL DIMER, LALATE COPOLYMER, CYCLOMETHICONE, KAOLIN, STEARIC ACID, STEARINIC ACID, STEARATE, AMMONIUM SHELLACATE, POLYSORBATE 20, S-LICA, SORBITAN TRISTEARATE, GLYCERYL STEARATE, MAGNESIUM ALUMINUM SILICATE, HYDROXYETHYLCELLULOSE, PIP, TOCOPHERYL ACETATE, ACACIA SENEGAL GUM, PITE, COFFEE ARABICA (COFFEE SEED EXTRACT), PANTOTHENIC ACID, POLYPEPTIDE, HYDROLYZED JOJOBA PROTEIN, SILK AMINO ACIDS, AMINO METHYL PROPANEDIOL, PROPYLENE GLYCOL, TETRADECYL PENTABENZOATE, ISOPROPYL ALCOHOL, DISODIUM EDTA, QUATERNIUM-15, CHLORPHENESIN, SORBIC ACID, PHENOXYETHANOL, METHYL PARABEN, BUTYL PARABEN, ETHYL PARABEN, PROPYL PARABEN, SOBOTYL PARABEN, (MAY CONTAIN) MICA, TITANIUM DIOXIDE (CI 77891), FERRIC FERROCYANIDE (CI 77510), IRON OXIDES (CI 77491, CI 77492, CI 77499), ULTRAMARINES (CI 77007), BLUE 1 LAKE (CI 42090), BLUE 1 (CI 42030), YELLOW 5 (CI 19140), ALUMINUM POWDER (CI 77300), BISMUTH OXYCHLORIDE (CI 77163), CARMINE (CI 75470), CHROMIUM HYDROXIDE GREEN (CI 77239), CHROMIUM OXIDE GREENS (CI 77288), YELLOW 5 LAKE (CI 19140), (MUNZ3981)

MagnaScopic  
Maximum Volume  
Mascara  
Mascara  
volume intense

NET WT.  
.3 OZ./9ml e



ESTÉE LAUDER

CAUTION: In case of eye irritation, infection or scratches, discontinue use of all eye cosmetics and see your ophthalmologist at once. Ophthalmologist-tested. Fragrance-free.  
PRECAUTION D'EMPLOI: En cas d'irritation des yeux, d'infection ou de démangeaisons, interrompre l'utilisation de tout produit cosmétique pour les yeux et consulter votre ophtalmologue au plus tôt. Soumis à des tests ophtalmologiques. Sans parfum.  
ACHTUNG: Bei Auftreten von Irritationen oder Infektionen am Auge Anwendung jeglicher kosmetischer Produkte für die Augenpartie absetzen und einen Arzt aufsuchen. Augenärztlich getestet. Duftfrei.

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